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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

S.C.,

Defendant and Appellant.

2d Crim. No. B291134  
(Super. Ct. No. TJ22442)  
(Los Angeles County)

S.C. appeals a juvenile court disposition order declaring him a continuing ward of the court and ordering his aggregated maximum physical confinement as six years ten months. (Welf. & Inst. Code, §§ 602, 726, subd. (d).) We modify the order to reflect an aggregated maximum term of physical confinement as six years six months, but otherwise affirm.

*FACTUAL AND PROCEDURAL HISTORY*

At different times between February 25, 2016, and June 15, 2018, the juvenile court sustained six juvenile delinquency petitions alleging that S.C. committed criminal offenses of felony vandalism and unlawful firearm and ammunition possession,

among other offenses. As each subsequent petition was adjudicated, the court aggregated the terms of maximum physical confinement as follows:

The first petition alleged that S.C. possessed marijuana for sale and committed felony vandalism. After S.C. admitted the vandalism count, the juvenile court sustained the allegation of the petition, declared S.C. a ward of the court, and placed him home on probation. The court then dismissed the marijuana possession count. The maximum punishment for the felony vandalism offense is three years. (Pen. Code, § 594, subd. (a).)<sup>1</sup>

The second petition alleged that S.C. possessed illegal drugs for sale. (Health & Saf. Code, § 11378.) The third petition, filed the same day as the second petition, alleged that S.C. committed felony vandalism. (§ 594, subd. (a).) S.C. admitted the allegations of each petition. The juvenile court sustained the allegations of the two petitions, continued S.C. as a ward of the court, and ordered him placed in a camp. Punishment for the drug and felony vandalism offenses was 16 months, two years, or three years for each offense. The court aggregated the term of maximum physical confinement as four years four months.

The fourth petition alleged that S.C. committed felony vandalism. (§ 594, subd. (a).) S.C. admitted the vandalism allegation. The juvenile court sustained the allegation of the fourth petition, continued S.C. as a ward of the court, and continued his camp placement. The court also aggregated the term of maximum physical confinement as five years.

The fifth petition alleged that S.C. carried a loaded firearm in public and was a minor in possession of a firearm. (§§ 25850,

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise stated.

subd. (a), 29610.) Following a contested adjudication hearing, the juvenile court sustained the allegations of the fifth petition, declared the two offenses to be felonies, continued S.C. as a ward of the court, and continued his camp placement. Punishment for each offense was 16 months, two years, or three years. The court then aggregated the term of maximum physical confinement as five years eight months.

The sixth petition alleged that S.C. was a minor in possession of a firearm, was a minor in possession of ammunition (misdemeanor), and gave false information to a police officer (misdemeanor). (§§ 29610, 29650, 148.9, subd. (a).) The sixth petition rested upon this evidence: In the afternoon of May 23, 2018, S.C., along with other minors, confronted a man standing on East 232 Place in Carson. Neighbors heard five or six gunshots. A group of minors soon entered the backyard of a residence belonging to Ruben Sanchez. Sanchez's brother allowed the minors to enter the home. Police officers soon arrived and searched the premises and backyard. Officers found a loaded firearm in the backyard in an overgrown area. They subsequently detained and arrested S.C. who gave a false name. S.C. admitted to a police officer that he handled the firearm, but denied owning the weapon or firing it.

Following a contested hearing, the juvenile court sustained the allegations of the sixth petition and declared the firearm possession offense to be a felony and the remaining offenses to be misdemeanors. The court continued S.C. as a ward of the court, and continued his camp placement. The court then aggregated the term of maximum physical confinement as six years ten months.

S.C. appeals the sixth petition disposition order and challenges the maximum physical confinement term.

*DISCUSSION*<sup>2</sup>

S.C. contends that the juvenile court erred by not explaining how it aggregated the prior sustained petitions and by computing the maximum physical confinement as six years ten months. He asserts that the record is unclear regarding the court's intent. S.C. points to a minute order notation that the sixth petition "adds 3 years, 4 months to maximum confinement time" as confusing. The Attorney General agrees that the notation is confusing but nevertheless explains how the six years ten months overall maximum physical confinement calculation is accurate.

As discussed herein, the Attorney General's calculation is in error because he mistakenly calculates the misdemeanor term as six months.

A minor may not be held in physical confinement for a period of time in excess of the maximum term permissible for an adult offender convicted of the same offense. (§ 726, subd. (d)(1); *In re Julian R.* (2009) 47 Cal.4th 487, 495.) Section 726, subdivision (d)(1) provides in part that "[i]f the minor is removed from the physical custody of his or her parent . . . , the order shall specify that the minor may not be held in physical confinement for a period in excess of the maximum term of imprisonment which could be imposed upon an adult convicted of the offense or offenses . . . ." The juvenile court's duty to specify the maximum term is mandatory. (*In re James A.* (1980) 101 Cal.App.3d 332, 339 [section 726 is "clearly directive and requires the juvenile

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<sup>2</sup> All further statutory references are to the Welfare and Institutions Code unless stated otherwise.

court judge to automatically specify in his commitment order the maximum period of confinement”].) The court is not required, however, to orally pronounce the maximum term of confinement or to give a statement of reasons. (*Julian R.*, at p. 497.)

Pursuant to section 726, subdivision (d)(3), where a juvenile court “elects to aggregate the period of physical confinement on multiple counts or multiple petitions, . . . the ‘maximum term of imprisonment’ shall be the aggregate term of imprisonment specified in subdivision (a) of Section 1170.1 of the Penal Code.” As a result, the court must determine the principal term, and add to it one-third of the midterm for each of the subordinate terms. (*In re Eric J.* (1979) 25 Cal.3d 522, 536-537.) This requirement is applicable to felony and misdemeanor charges. (*Id.* at p. 538.) A later court may not redetermine the maximum confinement time for a previously sustained petition or redetermine the application of Penal Code section 654 (prohibition against punishment for multiple crimes arising from single course of conduct). (*In re David H.* (2003) 106 Cal.App.4th 1131, 1136-1137.)

Here the criminal offense of being a minor in possession of a firearm is punished by 16 months, two years, or three years. (Pen. Code, § 29610.) One-third of the midterm sentence of two years is eight months. The Attorney General concedes that misdemeanor possession of ammunition may not be separately punished pursuant to section 654 because S.C. possessed the loaded firearm when he admittedly held it. The remaining misdemeanor allegation of giving false information to a police officer is punishable by one-third of the six-month term, or two months. Thus, the sixth petition results in an additional 10 months to the five years eight months determined following the

sustaining of the fifth petition, for a maximum term of confinement of six years six months.

The disposition order is modified to reflect a maximum period of confinement of six years six months. We direct the juvenile court to prepare an amended June 15, 2018, disposition order to so reflect. As modified, the order is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Catherine J. Pratt, Judge

Superior Court County of Los Angeles

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Mary Bernstein, under appointment by the Court of  
Appeal, for Defendant and Appellant.

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